

1 PRESTON DuFAUCHARD
 California Corporations Commissioner
 2 ALAN S. WEINGER
 Acting Deputy Commissioner
 3 MIRANDA L. MAISON (CA BAR NO. 210082)
 Senior Corporations Counsel
 4 Department of Corporations
 1515 K Street, Ste. 200
 5 Sacramento, California 95814
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 6
 Attorneys for Complainant
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8 BEFORE THE DEPARTMENT OF CORPORATIONS
 9 OF THE STATE OF CALIFORNIA
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11 In the Matter of the Accusation of THE) File No.: 963-2199
12 CALIFORNIA CORPORATIONS)
13 COMMISSIONER,) SETTLEMENT AGREEMENT
14)
15 Complainant,)
16)
17 vs.)
18)
19 BEACHWOOD ESCROW (Formerly Advance)
20 Express Escrow),)
21)
22 Respondent.)

23 This Settlement Agreement is entered into between a Beachwood (formerly Advance Express
 24 Escrow) and the California Corporations Commissioner ("Commissioner"), and is made with respect
 25 to the following facts:

26 **RECITALS**

27 A. Beachwood Escrow is a corporation in good standing, duly formed and existing
 28 pursuant to the laws of the State of California, and authorized to conduct business in the State of
 California.

B. Beachwood Escrow currently holds escrow agent's license number 963-2199 with its
 principal place of business located at 1509 W. Magnolia Blvd., Burbank, California 91506.

1 C. Sally Borboa is the president of Beachwood Escrow and is authorized to enter into
2 this Settlement Agreement on behalf of Beachwood Escrow.

3 D. Beachwood Escrow failed to timely file its 2006 Audit Report with the
4 Commissioner, in violation of Financial Code section 17406. The 2006 Audit Report was due on
5 April 15, 2007 but was not filed until February 14, 2008.

6 E. On March 28, 2008, the Commissioner issued an Order Imposing Penalties Pursuant
7 to Financial Code Section 17408 (“Penalty Order”) against Beachwood Escrow. The Commissioner
8 ordered Beachwood Escrow to pay penalties in the sum of \$30,300.00, reflecting a penalty of
9 \$100.00 for each of the 303 days the report was late.

10 F. Beachwood Escrow timely requested an administrative hearing, which was noticed
11 for July 3, 2008.

12 G. It is the intention and desire of the parties to resolve these matters without the
13 necessity of a hearing and/or other litigation.

14 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
15 forth herein, the parties agree as follows:

16 **TERMS AND CONDITIONS**

17 1. This Settlement Agreement is entered into for the purpose of judicial economy and
18 expediency, and to avoid the expense of a hearing, and possible further court proceedings.

19 2. Beachwood Escrow hereby admits the allegations contained in the Penalty Order.
20 Beachwood Escrow’s admissions herein are solely for the limited purposes of this proceeding and
21 any future proceeding that may be initiated by or brought before the Commissioner against
22 Beachwood Escrow. It is the intent and understanding between the parties that this Settlement
23 Agreement, and particularly Beachwood Escrow’s admissions herein, shall not be binding or
24 admissible against Beachwood Escrow in any action(s) brought against Beachwood Escrow by third
25 parties.

26 3. Beachwood Escrow agrees that the penalties accrued for the untimely filing of its
27 2006 Audit Report totaled \$30,300.00 as of February 14, 2008, the date it was filed. As full and
28 final resolution of the Penalty Order, Beachwood Escrow agrees to pay to the Commissioner the sum

1 of \$10,000.00. The penalty shall be paid in three installments. The first installment of \$3,333.33
 2 shall be due on July 15, 2008. The second installment of \$3,333.33 shall be due on August 15, 2008.
 3 And, the third and final installment of \$3,333.34 shall be due on September 15, 2008. Each payment
 4 shall be mailed to the Commissioner’s corporations counsel, Miranda L. Maison, at 1515 K Street,
 5 Suite 200, Sacramento, CA 95814.

6 4. Beachwood Escrow further agrees to an automatic revocation of its escrow agent’s
 7 license if any installment payment agreed to in Paragraph 3 is not timely paid in strict compliance
 8 with the terms thereof.

9 5. Beachwood Escrow acknowledges it has waived its right to an administrative hearing
 10 under California Financial Code sections 17608 and 17408 in connection with the Penalty Order,
 11 and hereby waives its right to a hearing, and to any reconsideration, appeal, or other rights which
 12 may be afforded pursuant to the Escrow Law, the California Administrative Procedure Act, the
 13 California Code of Civil Procedure, or any other provision of law in connection with these matters.

14 6. Beachwood Escrow acknowledges and agrees that the revocation provided for above
 15 in paragraph 4 shall not be the exclusive remedy available to the Commissioner in pursuing future
 16 violations but may be sought and employed in addition to any other remedy available pursuant to the
 17 Escrow Law.

18 7. Beachwood Escrow hereby agrees to the immediate issuance by the Commissioner of
 19 an order suspending Beachwood Escrow’s escrow agent’s license for a period of 14 calendar days
 20 (“Suspension Order”). The 14-day suspension shall be in effect from July 27, 2008 through August
 21 3, 2008, and from August 24, 2008 through August 31, 2008, during which periods Beachwood
 22 Escrow shall not accept any new escrow business, but may continue to service prior and open
 23 escrows, in accordance with California Financial Code section 17609. For purposes of this
 24 Settlement Agreement, “open escrow” shall mean an escrow wherein the parties to such escrow have
 25 already entered into a binding agreement and monies and/or escrow instructions have been submitted
 26 to Beachwood Escrow regarding the transaction.
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1 This suspension does not preclude Beachwood Escrow from: (1) continuing to service prior
2 and open escrows; (2) responding to regulatory inquiries from the Department of Corporations or
3 other agencies; (3) making the penalty payment described in this Settlement Agreement; and, (4)
4 otherwise responding to customer inquiries concerning open escrows.

5 Additionally, Beachwood Escrow will be required to engage its certified public accounting
6 firm to review the records of Beachwood Escrow after the suspension has been completed and report
7 its findings of compliance with the suspension to the Commissioner within 30 days of completion of
8 the suspension. The Commissioner reserves the right to audit Beachwood Escrow for compliance
9 with the suspension notwithstanding the findings of the certified public accountant's review. A copy
10 of the Suspension Order is attached and incorporated as Exhibit A.

11 8. The parties hereby acknowledge and agree that this Settlement Agreement is intended
12 to constitute a full, final and complete resolution of the Penalty Order. The parties further
13 acknowledge and agree that nothing contained in this Settlement Agreement shall operate to limit the
14 Commissioner's ability to assist any other agency (county, state or federal) with any prosecution,
15 administrative, civil or criminal, brought by any such agency against Beachwood Escrow based upon
16 any of the activities alleged in these matters or otherwise.

17 9. Each of the parties represents, warrants, and agrees that it has received, or
18 acknowledges the right to seek, independent legal advice from its attorney(s) with respect to the
19 advisability of executing this Settlement Agreement.

20 10. Each of the parties represents, warrants, and agrees that in executing this Settlement
21 Agreement it has relied solely on the statements set forth herein and, if applicable, the advice of its
22 own counsel. Each of the parties further represents, warrants, and agrees that in executing this
23 Settlement Agreement it has placed no reliance on any statement, representation, or promise of any
24 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
25 party or any other person or entity to make any statement, representation or disclosure of anything
26 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
27 any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude the
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introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Settlement Agreement.

11. This Settlement Agreement is the final written expression and the complete and exclusive statement of all the agreements, conditions, promises, representations, and covenants between the Parties with respect to the subject matter hereof, and supercedes all prior or contemporaneous agreements, negotiations, representations, understandings, and discussions between and among the parties, their respective representatives, and any other person or entity, with respect to the subject matter covered hereby.

12. In that the parties have had the opportunity to draft, review and edit the language of this Settlement Agreement, no presumption for or against any party arising out of drafting all or any part of this Settlement Agreement will be applied in any action relating to, connected to, or involving this Settlement Agreement. Accordingly, the parties waive the benefit of California Civil Code section 1654 and any successor or amended statute providing that, in cases of uncertainty, language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.

13. This Settlement Agreement may be executed in one or more counterparts, each of which shall be an original but all of which, together, shall be deemed to constitute a single document.

14. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement.

Dated: 7/8/08

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
ALAN S. WEINGER
Acting Deputy Commissioner

Dated: 7/8/08

BEACHWOOD ESCROW

By _____
SALLY BORBOA
President

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